

#### § 4.304

documentation relating to the particular environmental problems associated with the disputing applicant's proposed project. The Director will consider such factors as:

(i) The time the fish and wildlife agency spent reviewing the application;

(ii) The proportion of the cost statement to the time the fish and wildlife agency spent reviewing the application;

(iii) Whether the fish and wildlife agency's expenditures conform to Federal expenditure guidelines for such items as travel, per diem, personnel, and contracting; and

(iv) Whether the studies conducted by the agency, if any, are duplicative, limited to the proposed project area, unnecessary to determine the impacts to or mitigation measures for the particular fish and wildlife resources affected by the proposed project, or otherwise unnecessary to set terms and conditions for the proposed project.

(3) *Unreasonable cost statements.* If the Director determines that a disputed fish and wildlife agency cost statement is unreasonable, the disputing applicant and the fish and wildlife agency will be afforded 45 days from the date of notification to attempt to reach an agreement regarding the reimbursable costs of the agency. If the disputing applicant and the fish and wildlife agency fail to reach an agreement on the disputed cost statement within 45 days from the date of notification, the Director will determine the costs that the agency should reasonably have incurred.

(f) *Refunds.* (1) If the amount paid by a section 30(c) applicant under § 4.302 exceeds the total amount of the cost statements submitted by fish and wildlife agencies under paragraph (a) of this section, the Commission will notify the Treasury to refund the difference to the applicant within 45 days from the date of the bill issued to the applicant under paragraph (b) of this section.

(2) If the amount paid by a section 30(c) applicant exceeds the amount determined to be reasonable by the Director pursuant to paragraph (d)(2) of this section, the Commission will notify the Treasury to refund the difference to

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the applicant within 45 days of the resolution of all dispute proceedings.

[Order 487, 52 FR 48404, Dec. 22, 1987, as amended by Order 647, 69 FR 32438, June 10, 2004]

#### § 4.304 Payment.

(a) A payment required under this subpart must be made by check payable to the United States Treasury. The check must indicate that the payment is for *ECPA Fees*.

(b) If a payment required under this subpart is not made within the time period prescribed for making such payment, interest and penalty charges will be assessed. Interest and penalty charges will be computed in accordance with 31 U.S.C. 3717 and 4 CFR part 102.

(c) The Commission will not issue a license or exemption, unless the applicant has made full payments of any fees due under § 4.303(c).

#### § 4.305 Enforcement.

(a) The Commission may take any appropriate action permitted by law if a section 30(c) applicant does not make a payment required under this subpart. The Commission will not be liable to any fish and wildlife agency for failure to collect any amounts under this subpart.

(b) If the Commission is unable to collect the full amount due by a section 30(c) applicant on behalf of more than one agency, the amount the Commission does collect will be distributed to the agencies on a *pro-rata* basis except if an agency's cost statement is greater than its most recent estimate to the applicant under § 4.301(b), then the difference between the estimate and the cost statement will not be reimbursed until any amounts owed to other agencies have been paid.

#### Subpart N—Notice of Intent To Construct Qualifying Conduit Hydropower Facilities

SOURCE: Order 800, 79 FR 59111, Oct. 1, 2014, unless otherwise noted.

#### § 4.400 Applicability and purpose.

This part implements section 30(a) of the Federal Power Act, as amended by the Hydropower Regulatory Efficiency

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Act of 2013, and provides procedures for obtaining a determination from the Commission that the facility to be constructed is a qualifying conduit hydropower facility, as defined in §4.30(b)(26), and thus, is not required to be licensed under Part I of the FPA.

### §4.401 Contents of notice of intent to construct a qualifying conduit hydropower facility.

(a) A notice of intent to construct a qualifying conduit hydropower facility submitted under this subpart must contain the following:

(1) An introductory statement as described in paragraph (b) of this section;

(2) A statement that the proposed project will use the hydroelectric potential of a non-federally owned conduit as set forth in paragraph (c) of this section;

(3) A statement that the proposed facility has not been licensed or exempted from the licensing requirements of Part I of the FPA, on or before August 9, 2013, the date of enactment of the Hydropower Regulatory Efficiency Act, as set forth in paragraph (d) of this section;

(4) A description of the proposed facility as set forth in paragraph (e) of this section;

(5) Project drawings as set forth in paragraph (f) of this section;

(6) If applicable, the preliminary permit project number for the proposed facility; and,

(7) Verification as set forth in paragraph (g) of this section.

(b) *Introductory statement.* The introductory statement must be set forth in the following format:

#### BEFORE THE FEDERAL ENERGY REGULATORY COMMISSION

#### NOTICE OF INTENT TO CONSTRUCT QUALIFYING CONDUIT HYDRO- POWER FACILITY

[Name of applicant] applies to the Federal Energy Regulatory Commission for a determination that the [facility name] is a qualifying conduit hydropower facility, meeting the requirements of section 30(a) of the Federal Power Act, as amended by section 4 of the Hydropower Regulatory Efficiency Act of 2013.

The location of the facility is:

State or Territory: \_\_\_\_\_

County: \_\_\_\_\_

Township or nearby town: \_\_\_\_\_

Water source: \_\_\_\_\_

The exact name and business address of the applicant(s) are:

Applicant's Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

The exact name and business address of each person authorized to act as an agent for the applicant(s) in this notice of intent are:

Name of Agent: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

[Name of applicant] is [a citizen of the United States, an association of citizens of the United States, a municipality, State, or a corporation incorporated under the laws of (specify the United States or the state of incorporation), as appropriate].

(c) *Non-Federal Conduit Statement.* The non-federal conduit statement must be set forth in the following format:

The [facility name] will use the hydroelectric potential of a non-federally owned conduit.

(d) *Original facility statement.* The original facility statement must be set forth in the following format:

The [facility name] has not been licensed or exempted from the licensing requirements of Part I of the FPA, on or before August 9, 2013, the date of enactment of the Hydropower Regulatory Efficiency Act.

(e) *Description of proposed facility.* Description of proposed facility must include:

(1) A detailed description of any conduits and associated consumptive water supply facilities, intake facilities, powerhouses, and any other structures associated with the facility;

(2) The purposes for which the conduit is used;

(3) The number, type, generating capacity (kW or MW), and estimated average annual generation (kWh or MWh) of the generating units and brief description of any plans for future units; and,

(4) A description of the nature and extent of the dam that would occur in association with construction of the